

Notice  
of  
Rulemaking Hearing  
Department of Environment and Conservation  
Division of Solid Waste Management

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There will be a public rulemaking hearing before the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, acting on behalf of the Commissioner, to consider the adoption and promulgation of rules and amendments to rules pursuant to the Tennessee Code Annotated Sections 11-1-101 and 68-131-401 et seq.; the Tennessee Environmental Protection Fund Act, Tennessee Code Annotated Section 68-203-101 et seq.; and the Uniform Administrative Procedures Act, Tennessee Code Annotated Section 4-5-101 et seq. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204, and will take place in the 5<sup>th</sup> Floor Conference Room, L & C Tower, 401 Church Street, Nashville, Tennessee at 1:00 PM CST on January 22, 2003.

Individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person or by writing, telephone, or other means, and should be made no less than ten days prior to January 22, 2003 or the date such party intends to review such filings, to allow time to provide such aid or service. Contact the Tennessee Department of Environment and Conservation, ADA Coordinator, Issac Okoreeh-Baah, 12<sup>th</sup> Floor, L & C Tower, 401 Church Street, Nashville, TN 37243, (615) 532-0059. Hearing impaired callers may use the Tennessee Relay Service (1-800-848-0298).

Substance of Proposed Rules

Amendments

Rule Chapter 1200-1-18 Lead Based Paint Abatement is amended by Reserving Rules 1200-1-11-.02, 1200-1-11-.03 and 1200-1-11-.04 and adding the following new Rules 1200-1-18-.05 Lead-Based Paint Hazards and 1200-1-18-.06 Lead-Based Paint Pre-Renovation Education to read as follows:

## New Rules

## Table of Contents

Rule 1200-1-18-.02 [Reserved]  
Rule 1200-1-18-.03 [Reserved]  
Rule 1200-1-18-.04 [Reserved]  
Rule 1200-1-18-.05 Lead-Based Paint Hazards

- (1) Scope and Applicability. [40 CFR 745.61]
- (2) Reserved
- (3) Definitions. [40 CFR 745.63]
- (4) Reserved
- (5) Lead-Based Paint Hazards. [40 CFR 745.65]

## 1200-1-18-.05 Lead-Based Paint Hazards [Subpart D]

- (1) Scope and Applicability. [40 CFR 745.61]
  - (a) This subpart identifies lead-based paint hazards.
  - (b) The standards for lead-based paint hazards apply to target housing and child-occupied facilities.
  - (c) Nothing in this Rule requires the owner of property (ties) subject to these standards to evaluate the property (ties) for the presence of lead-based paint hazards or takes any action to control these conditions if one or more of them is identified.
  - (d) Identification of the lead hazards as defined on and after the effective date of this Rule, shall be disclosed to the property owner and occupants of the target housing and child-occupied facility.
- (2) Reserved [40 CFR 745.62]
- (3) Definitions. [40 CFR 745.63]

The following definitions apply to Rule Chapter 1200-1-18, unless otherwise specified.

“Arithmetic mean” means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

“Chewable surface” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42U.S.C. 4851b(2). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

“Common area group” means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to hallways, stairwells, and laundry rooms.

“Concentration” means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per gram or parts per million by weight) in a sample of dust or soil.

“Deteriorated paint” means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

“Dripline” means the area within 3 feet surrounding the perimeter of a building.

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“Friction surface” means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

“Impact surface” means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of doorframes.

“Interior window sill” means the portion of the horizontal window ledge that protrudes into the interior of the room.

“Lead-based paint hazard” means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in Rule 1200-1-18-.05(5).

“Loading” means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

“Mid-yard” means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

“Play area” means an area of frequent soil contact by children of less than 6 years of age as indicated by, but not limited to, such factors including the following: the presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

“Residential building” means a building containing one or more residential dwellings.

“Room” means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least 6 inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened in porch that is used as a living area is a room.

“Soil sample” means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent method.

“Weighted arithmetic mean”, means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example, the weighted arithmetic mean of a single surface sample containing 60  $\mu\text{g}/\text{ft}^2$ , a composite sample (three subsample) containing 100  $\mu\text{g}/\text{ft}^2$ , and a composite sample (4 subsamples) containing 110  $\mu\text{g}/\text{ft}^2$  is 100  $\mu\text{g}/\text{ft}^2$ . This result is based on the equation  $[60+(3*100)+(4*110)]/(1+3+4)$ .

“Window trough” means, for a typical double-hung window, the portion of the exterior windowsill between the interior window sill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

“Wipe sample” means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques, or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust."

(4) Reserved [40 CFR 745.64]

(5) Lead-Based Paint Hazards. [40 CFR 745.65]

(a) Paint-Lead Hazard. A paint-lead hazard is any of the following:

1. Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in subparagraph (b) of this paragraph.
2. Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a doorknob that knocks into a wall or a door that knocks against its door frame).
3. Any chewable lead-based painted surface on which there is evidence of teeth marks.
4. Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(b) Dust-Lead Hazard. - A dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 40  $\mu\text{g}/\text{ft}^2$  on floors or 250  $\mu\text{g}/\text{ft}^2$  on interior window sills based on wipe samples.

(c) Soil-Lead Hazard. - A soil-lead hazard is bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 400 parts per million ( $\mu\text{g}/\text{g}$ ) in a play area or average of 1,200 parts per million of bare soil in the rest of the yard based on soil samples.

(d) Work Practice Requirements. - Applicable certification, occupant protection, and clearance requirements and work practice standards are found in Rule 1200-1-18-.01. The work practice standards in that Rule do not apply when treating paint-lead hazards of less than:

1. Two square feet of deteriorated lead-based paint per room or equivalent,
2. Twenty square feet of deteriorated paint on the exterior building, or
3. Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

Authority: T.C.A. §11-1-101 and §§68-131-401 et seq.

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## Rule 1200-1-18-.06 Lead-Based Paint Pre-Renovation Education

- (1) Scope and Applicability. [40 CFR 745.80 and 40 CFR 745.82]
- (2) Definitions. [40 CFR 745.83]
- (3) Proprietary Information. [40 CFR 745.84]
- (4) Availability of Information.
- (5) Information Distribution Requirements. [40 CFR 745.85]
- (6) Record Keeping Requirements. [40 CFR 745.86]
- (7) Enforcement and Penalties. [40 CFR 745.87]
- (8) Acknowledgment and Certification Statements. [40 CFR 745.88]
- (9) Violations.

## Rule 1200-1-18-.06 Residential Property Renovation [Subpart E]

- (1) Purpose, Scope and Applicability. [40 CFR 745.80 and 40 CFR 745.82]
  - (a) The purpose of this Rule is to require each person who performs a renovation of target housing for compensation to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation.
  - (b) Except as provided in subparagraph (c) of this paragraph, this Rule applies to all renovations of target housing performed for compensation.
  - (c) This Rule does not apply to renovation activities that are limited to the following:
    1. Minor repair and maintenance activities (including minor electrical work and plumbing) that disrupt 2 square feet or less of painted surface per component.
    2. Emergency renovation operations.
    3. Renovations in target housing in which a written determination has been made by an inspector (certified by the State of Tennessee pursuant Rule 1200-1-18-.01(7)) that the components affected by the renovation are free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight, where the renovator has obtained a copy of the determination.
- (2) Definitions. [40 CFR 745.83 and 40 CFR 745.103]

The following definitions apply to Rule Chapter 1200-1-18, unless otherwise specified.

“The Act” means Tennessee Code Annotated 68-131-401, et seq., Tennessee Lead-Based Paint Abatement Certification Act.

“Agent” means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser’s representative who receives all compensation from the purchaser.

“Available” means in the possession of or reasonably obtainable by the seller or lessor at the time of the disclosure.

“Commissioner” means the Commissioner of the Tennessee Department of Environment and Conservation or his authorized representative.

“Common area” means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

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“Contract for the purchase and sale of residential real property” means any contract or agreement in which one party agrees to purchase an interest in real property on which there is situated one or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

“Emergency renovation operations” means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.

“Evaluation” means a risk assessment and/or inspection.

“Foreclosure” means any of the various methods, statutory or otherwise, known in different jurisdictions, of enforcing payment of a debt, by the taking and selling of real property.

“Housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

“HUD” means the U.S. Department of Housing and Urban Development.

“Inspection” means:

- (a) A surface-by-surface investigation to determine the presence of lead-based paint as provided in subparagraph (8)(b) of Rule Chapter 1200-1-18-0.1, Lead-Based Paint Activities and
- (b) The provision of a report explaining the results of the investigation.

“Lead-based paint” means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

“Lead-based paint free housing” means target housing that has been found to be free of paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

“Lead-based paint hazard” means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in Rule Chapter 1200-1-18-.05(5).

“Lessee” means any entity that enters into an agreement to lease, rent, or sublease target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Lessor” means any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Multi-family housing” means a housing property consisting of more than four dwelling units.

“Owner” means any entity that has legal title to target housing, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations, except where a mortgagee holds legal title to property serving as collateral for a mortgage loan, in which case the owner would be the mortgagor.

“Pamphlet” means the EPA pamphlet developed under section 406(a) of TSCA for use in complying with this and other rulemakings under Title IV of TSCA and the Residential Lead-Based Paint Hazard Reduction Act, or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information.)

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“Person” means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal Government.

“Purchaser” means an entity that enters into an agreement to purchase an interest in target housing, including, but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

“Reduction” means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

“Renovation” means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of an abatement as defined in Rule Chapter 1200-1-18-.01(8). The term renovation includes (but is not limited to): the removal or modification to painted surfaces or painted components (e.g., modification of painted doors, surface preparation activity (such as sanding, scraping, or other such activities that may generate paint dust)); the removal of large structures (e.g., walls, ceiling, large surface replastering, major re-plumbing); and window replacement.

“Renovator” means any person who performs for compensation a renovation.

“Residential dwelling” means:

- (a) A single-family dwelling, including attached structures such as porches and stoops; or
- (b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

“Risk assessment” means an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

- (a) Information gathering regarding the age and history of the housing and occupancy by children under age 6;
- (b) Visual inspection;
- (c) Limited wipe sampling or other environmental sampling techniques;
- (d) Other activity as may be appropriate; and
- (e) Provision of a report explaining the results of the investigation.

“Seller” means any entity that transfers legal title to target housing, in whole or in part, in return for consideration, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

The term “seller” also includes:

- (a) An entity that transfers shares in a cooperatively owned project, in return for consideration; and
- (b) An entity that transfers its interest in a leasehold, in jurisdictions or circumstances where it is legally permissible to separate the fee title from the title to the improvement, in return for consideration.

“Target housing” means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

“TSCA” means the Toxic Substances Control Act, 15 U.S.C. 2601.

“0-bedroom dwelling” means any residential dwelling in which the living area is not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

(3) Proprietary Information. [40 CFR 745.84]

(a) General

1. Purpose, Scope, and Applicability.

Any information which is supplied to the Department by persons who are subject to these Rules or by other governmental agencies and which is designated as proprietary information (as defined in subpart 2(viii) of this subparagraph) shall be handled by the Department as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary, any information supplied to the Department under or relating to these Rules shall be available for public review at any time during the State's normal business hours.

2. Definitions.

The following terms shall be defined as indicated for the purposes of this paragraph and this paragraph only:

- (i) "Access" is the ability and opportunity to gain knowledge of Proprietary Information in any manner whatsoever.
- (ii) "Authorized person" is any person authorized to receive Proprietary Information that such authorization shall be granted in writing by the Commissioner.
- (iii) "Document" is any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproduction of such things by any means or process; and sound, voice, or electronic recordings in any form.
- (iv) "Document Control Number" is the unique number assigned by the document control officer to any document containing Proprietary Information.
- (v) "Document Control Officer" is the individual authorized by the Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing Proprietary Information.
- (vi) "Information" is knowledge which can be communicated by any means.
- (vii) "Instruction" is fully informing individuals in writing of their responsibilities for safeguarding Proprietary Information and the security procedures they shall follow.
- (viii) "Proprietary Information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the Department by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which

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has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary must, at a minimum, answer the questions in items (I) through (IV) of this subpart. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.

- (I) Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?
- (II) What measures have you taken to guard against undesired disclosure of the information to others?
- (III) To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
- (IV) Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

3. Policy.

Department employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any Proprietary Information coming to them in the course of their employment or official duties. Proprietary Information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released only to authorized persons.

(b) Responsibilities.

1. Commissioner

The Commissioner is responsible for:

- (i) Designating a document control officer;
- (ii) Assuring that all Department employees receiving and handling Proprietary Information receive instruction as to their responsibilities for controlling Proprietary Information;
- (iii) Maintaining a record which lists all employees who have authorized access to Proprietary Information;
- (iv) Obtaining a "Confidentiality Agreement" from all employees having access to Proprietary Information;
- (v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to Proprietary Information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combinations;
- (vii) Taking appropriate disciplinary action concerning any Department employees who fail to comply with the requirements of this paragraph; and

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- (viii) Notifying the person submitting Proprietary Information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document Control Officer.

The Document Control Officer is responsible for the maintenance, control and distribution of all Proprietary Information received by the Department as follows:

- (i) Logging of all Proprietary Information as received by the Department, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing Proprietary Information;
- (iii) Maintaining a system which identifies employees authorized to receive Proprietary Information;
- (iv) Releasing Proprietary Information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any Proprietary Information transmitted to field locations is received;
- (vi) Maintaining at Department offices a system for retrieval of documents that are furnished to other program offices;
- (vii) Authorizing and supervising the reproduction and destruction of Proprietary Information; and
- (viii) Assuring that recipients of Proprietary Information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released Proprietary Information the same day.

3. Employees.

Employees are responsible for:

- (i) Controlling all Proprietary Information entrusted to them;
- (ii) Only discussing Proprietary Information with authorized persons;
- (iii) Never leaving the Proprietary Information unattended when not properly stored;
- (iv) Never discussing Proprietary Information over the telephone except upon approval of the document control officer should the Proprietary Information be needed in an emergency situation;
- (v) Storing the Proprietary Information as specified in part (c)5 of this paragraph when not in use and at the close of business;
- (vi) Not reproducing Proprietary Information documents. Additional copies must be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the Commissioner.

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## (c) Procedures.

## 1. Receipt and Handling.

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the Department;
- (ii) Log in all Proprietary Information received by the Department;
- (iii) Assign a document control number to all Proprietary Information;
- (iv) Attach a Proprietary Information cover sheet to the document;
- (v) Release Proprietary Information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions at Rule 1200-1-18-.06(3)(a)2(viii)(I)-(IV) and other information as may be required, determine whether to approve or deny it, in part or in whole.

## 2. Transmission.

- (i) Proprietary Information must be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope must reflect the address of the recipient with the following additional wording on the front side of the inner envelope:

"Confidential Business - To Be Opened By Document Control Officer Only."

The outer envelope must reflect the normal address without the additional wording.

- (ii) All requests to the document control officer for Proprietary Information must be in writing and signed by the requesting employee.
- (iii) Proprietary Information may be hand carried to other Department facilities by authorized persons providing the **dispatching** document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried should be packaged as described in subpart (i) of this part.
- (iv) Proprietary Information within a Department office shall be hand delivered only by an authorized person. At no time shall Proprietary Information be transmitted through inner office mailing channels.

## 3. Reproduction.

Proprietary Information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

## 4. Destruction.

Proprietary Information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a

record of destruction in the appropriate log and notify the person submitting the Proprietary Information.

5. Storage.

- (i) Documents containing Proprietary Information must be stored within a locked cabinet so as to limit access to authorized persons.
- (ii) Keys and/or combinations to cabinets and/or rooms where the data is stored must be issued only to an authorized person.

(d) Transmittal Outside Department Offices.

Proprietary Information shall not be transmitted outside Department offices without the approval of the Commissioner and such information must be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the Proprietary Information shall be notified when such occurs.

(e) Release to EPA.

Notwithstanding any requirement of this paragraph seemingly to the contrary, Proprietary Information may be released to the U.S. Environmental Protection Agency in connection with the Commissioner's implementation or his responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of Proprietary Information to EPA, however, will be made with a confidentiality claim and shall be accompanied by the written statement received by the Department pursuant to subpart (a)2(viii) of this paragraph. Any transmittal of Proprietary Information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The Commissioner shall notify the submitter of Proprietary Information of the release of such information to EPA as soon as practicable - to be no later than 5 days after such release - following receipt of EPA's request for the information.

(4) Availability of Information.

- (a) The Division will respond to all requests for records within 20 days after the date of receipt of such requests.
- (b) If a facility does not assert a claim of proprietary information at the first opportunity provided by the Division, the Division may release the information without further notice to the facility. In addition, in the case of any information submitted in connection with a certification or accreditation, application, any facility proprietary information claim must be asserted at the time of submission of the information to the Division.
- (c) If a proprietary information claim is asserted and cannot be resolved in the time period provided for the Division's response to a request, the requestor will be notified of the proprietary information claim within the maximum 20-day time limit provided for the Division's response. In addition, the requestor must be told that the Division has denied the request in order to resolve the proprietary information claim.

(5) Information Distribution Requirements. [40 CFR 745.85]

(a) Renovations in Dwelling Units.

No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the renovator shall:

- 1. Provide the owner of the unit with the pamphlet, and comply with one of the following:

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- (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
- 2. In addition to the requirements in part (a)1 of this paragraph, if the owner does not occupy the dwelling unit, provide an adult occupant of the unit with the pamphlet, and comply with one of the following:
  - (i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling and that the renovator has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date, and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Renovations in Common Areas.

No more than 60 days before beginning renovation activities in common areas of multi-family housing, the renovator shall:

- 1. Provide the owner with the pamphlet, and comply with one of the following:
  - (i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet.
  - (ii) Obtain a certificate of mailing at least 7 days prior to the renovation.
- 2. Notify in writing, or ensure written notification of, each unit of the multi-family housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.
- 3. Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.
- 4. If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notice.

(c) Written Acknowledgment.

Sample language for such acknowledgments is provided in paragraph (7) of this Rule. The written acknowledgments required in subparts (a)1(i), (a)2(i), and (b)1(i) of this paragraph shall:

- 1. Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

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2. Be either a separate sheet or part of any written contract or service agreement for the renovation.
  3. Be written in the same language as the text of the contract or agreement for the renovation or, in the case of non-owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.
- (6) Recordkeeping Requirements. [40 CFR 745.86]
- (a) Renovators shall retain and, if requested, make available to the Commissioner all records necessary to demonstrate compliance with this Rule for a period of 3 years following completion of the renovation activities in target housing.
  - (b) Records that must be retained pursuant to subparagraph (a) of this paragraph shall include (where applicable):
    1. Reports certifying that a determination had been made by an inspector (certified pursuant to Rule 1200-1-18-.01(7)) that lead-based paint is not present in the area affected by the renovation, as described in paragraph (1) of this Rule.
    2. Signed and dated acknowledgments of receipt as described in subparts (a)1(i), (a)2(i), and (b)1(i) of paragraph (4) of this Rule.
    3. Certifications of attempted delivery as described in subpart (a)2(i) of paragraph (4) of this Rule.
    4. Certificates of mailing as described in subparts (a)1(ii), (a)2(ii), and (b)1(ii) of paragraph (4) of this Rule.
    5. Records of notification activities performed regarding common area renovations, as described in parts (b)3 and (b) 4 of paragraph 4 of this Rule.
- (7) Enforcement and Penalties. [40 CFR 745.87]
- Enforcement of the provisions of these Rules and Penalties for violations shall be as set forth in Tennessee Code Annotated (T.C.A.) § 68-131-404 and § 68-131-405 of the Act.
- (8) Acknowledgment and Certification Statements. [40 CFR 745.88]
- (a) Acknowledgment Statement.
    1. As required under part (c) 1 of paragraph (4) of this Rule, acknowledgments shall include a statement of receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.
    2. Sample acknowledgment language. The following is a sample of language that could be used for such acknowledgments:

I have received a copy of the pamphlet, *Protect Your Family From Lead In Your Home*, informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

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Signature

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Printed Name

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Date

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Unit Address

## (b) Certification of Attempted Delivery.

1. When an occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the renovator is permitted (per subpart (a)(2)(i) of paragraph (4) of this Rule) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g. occupant refuses to sign, no adult occupant available), the signature of the renovator, and the date of signature.
2. Sample certification language. The following is a sample of language that could be used under those circumstances:

## (i) Unavailable For Signature.

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

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Signature

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Printed Name

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Date

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Unit Address

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Attempted delivery dates and times: \_\_\_\_\_  
\_\_\_\_\_

## (ii) Refusal To Sign.

I certify that I have made a good faith effort to deliver the pamphlet, *Protect Your Family From Lead In Your Home*, to the unit listed below, and that the occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit by sliding it under the door.

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Signature

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Printed Name

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Unit AddressAttempted delivery dates and times: 

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## (9) Violations.

## (a) It is a violation for a renovator to:

1. Fail or refuse to comply with any provision of this Rule.
2. Fail or refuse to establish and maintain records required by paragraph (6) of this Rule.
3. Fail to or refuse to make available to the Commissioner records, as required by this Rule.
4. Fail to or refuse to permit the Commissioner access to records, as required by this Rule
5. Fail to or refuse to permit the Commissioner entry or inspection of the business premises of persons and firms engaged in renovation during business hours upon presenting credentials identifying themselves as employees of the department.

Authority: T.C.A. §11-1-101 and §§68-131-401 et seq.

Legal contact and/or party who will approve final copy  
for publication and is the contact for disk acquisition:Adrianne White  
Division of Solid Waste Mgmt.  
5<sup>th</sup> Floor, L&C Tower  
401 Church Street  
Nashville, TN 37243-1531  
(615) 532-0885**D  
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## Other Information

The Division has prepared an initial set of draft rules for public review and comment. Copies of these initial draft rules are available for review only at the Tennessee Department of Environment and Conservation's (TDEC's) Environmental Assistance Centers located as follows:

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Memphis Environmental Assistance Center  
Suite E-645, Perimeter Park  
2510 Mount. Moriah Road  
Memphis, TN 38115-1520  
(901) 368-7939/ 1-888-891-8332

Cookeville Environmental Assistance Center  
1221 South Willow Avenue  
Cookeville, TN 38506  
(931) 432-4015/ 1-888-891-8332

Jackson Environmental Assistance Center  
362 Carriage House Drive  
Jackson, TN 38305-2222  
(731) 512-1300/ 1-888-891-8332

Chattanooga Environmental Assistance Center  
Suite 550- State Office Building  
540 McCallie Avenue  
Chattanooga, TN 37402-2013  
(423) 634-5745/ 1-888-891-8332

Columbia Environmental Assistance Center  
2484 Park Plus Drive  
Columbia, TN 38401  
(931) 380-3371/ 1-888-891-8332

Knoxville Environmental Assistance Center  
Suite 220- State Plaza  
2700 Middlebrook Pike  
Knoxville, TN 37921  
(865) 594-6035/ 1-888-891-8332

Nashville Environmental Assistance Center  
711 R. S. Gass Blvd.  
Nashville, TN 37243  
(615) 687-7000/1-888-891-8332

Johnson City Environmental Assistance Center  
2305 Silverdale Road  
Johnson City, TN 37601-2162  
(423) 854-5400/1-888-891-8332

Additional review copies only are available at the following library locations:

McIver's Grant Public Library  
204 North Mill Street  
Dyersburg, TN 38024-4631  
(731) 285-5032

W. G. Rhea Public Library  
400 West Washington Street  
Paris, TN 38242-0456  
(731) 642-1702

Hardin County Library  
1100 Pickwick Rd.  
Savannah, TN 38372  
(731) 925-4314

Clarksville-Montgomery County Public Library  
350 Pageant Lane, Suite 501  
Clarksville, TN 37040-0005  
(931) 648-8826

Coffee County-Manchester Public Library  
1005 Hillsboro Highway  
Manchester, TN 37355-2099  
(931) 723-5143

Art Circle Public Library  
154 East First Street  
Crossville, TN 38555-4696  
(931) 484-6790

E. G. Fisher Public Library  
1289 Ingleside Ave.  
Athens, TN 37371-1812  
(423) 745-7782

Kingsport Public Library & Archives  
400 Broad Street  
Kingsport, TN 37660-4292  
(423) 229-9489

The "DRAFT" rules may also be accessed for review using <http://www.state.tn.us/environment/new.htm> to locate the Department's World Wide Web Site and search under "What's New".

Copies are also available for review at the Nashville Central Office (see address below).

Tennessee Department of Environment and Conservation  
Division of Solid Waste Management  
5<sup>th</sup> Floor, L & C Tower  
401 Church Street  
Nashville, TN 37243-1535  
(615) 532-0780

Office hours for the Division's offices are from 8:00 AM to 4:30 PM, Monday through Friday (excluding holidays).

Oral or written comments are invited at the hearing. In addition, written comments may be submitted prior to or after the public hearing to: Division of Solid Waste Management; Tennessee Department of Environment and Conservation; Attention: Ms. Adrienne White; 5<sup>th</sup> Floor, L & C Tower; 401 Church Street; Nashville, Tennessee 37243-1535; telephone 615-532-0885 or FAX 615-532-0886. However, such written comments must be received by the Division by 4:30 PM CST, February 7, 2003 in order to assure consideration. For further information, contact Ms. Adrienne White at the above address or telephone number.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Department of Environment and Conservation, Division of Solid Waste Management.

\_\_\_\_\_  
Mike Apple  
Director

Subscribed to and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

The notice of rulemaking set out herein was properly filed in the Department of State on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_

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